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# Belcourt Public School District v. Davis

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***Belcourt Public School District v. Davis*, 786 F.3d 653 (8th Cir. 2015)**

**Hallie E. Bishop**

*Belcourt Public School District v. Davis* affirms a narrower scope of the first *Montana* exception, which provides one of two mechanisms to establish tribal civil jurisdiction over non-members. *Belcourt Public School District* affirms that the first *Montana* exception does not apply to State officers or entities acting within their governmental capacity, but only to those private individuals who voluntarily enter into agreements with a tribe.

**I. INTRODUCTION**

*Belcourt Public School District v. Davis* follows the precedent of *Montana v. United States*, where the Supreme Court of the United States set forth the framework used to determine whether tribal subject matter jurisdiction exists in civil litigation over non-members.<sup>1</sup> The United States Court of Appeals for the Eighth Circuit determined that the Belcourt Public School District (“School District”) was not subject to tribal jurisdiction despite its agreement with the Turtle Mountain Band of Chippewa Indians (“Tribe”), and its location within the Turtle Mountain Indian Reservation (“Reservation”).<sup>2</sup> The court held that the School District, acting as a governmental entity, was unable to enter to a private, consensual, commercial dealings with the Tribe as required to fulfill the first *Montana v. United States* exception. Because the *Montana* exceptions were not fulfilled, the tribal court lacked jurisdiction to hear the claims.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

“The School District is a political subdivision of the State of North Dakota.”<sup>3</sup> The School District operates within the boundaries of the Reservation.<sup>4</sup> The North Dakota Constitution requires that all children within the School District must receive an education.<sup>5</sup> For this reason, the Tribe and School District entered into a series of agreements in 2006 and 2009, recognizing their mutual responsibility to educate all children, Indian and non-Indian.<sup>6</sup> These agreements provided that the School District had the exclusive authority over the daily operations of the Turtle Mountain Community High School.<sup>7</sup>

Several tribal members filed suit against the School District in Turtle Mountain Tribal Court (“Tribal Court”) alleging excessive force, defamation, and

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<sup>1</sup> *Belcourt Pub. Sch. Dist. v. Davis*, 786 F.3d 653 (8th Cir. 2015).

<sup>2</sup> *Id.* at 662.

<sup>3</sup> *Id.* at 656 (citing *Bismarck Pub. Sch. Dist. #1 v. State By and Through N.D. Legislative Assembly*, 511 N.W.2d 247, 251 (N.D. 1994)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; see N.D. Const. art. VIII, § 1.

<sup>6</sup> *Belcourt Pub. Sch. Dist.*, 786 F.3d at 656.

<sup>7</sup> *Id.*

multiple employment-related claims.<sup>8</sup> Relying on *Nevada v. Hicks*,<sup>9</sup> the Tribal Court dismissed the claims for lack of jurisdiction.<sup>10</sup> The Tribe appealed to the Turtle Mountain Tribal Court of Appeals (“Tribal Court of Appeals”), which reversed.<sup>11</sup> Noting that the School District knowingly signed an agreement with the Tribe subjecting itself to tribal jurisdiction, the Tribal Court of Appeals held that *Hicks* was not dispositive.<sup>12</sup> The School District then filed an action in the United States District Court for the District of North Dakota, seeking an injunction and a declaratory judgement stating that the Tribal Court lacked jurisdiction over the School District.<sup>13</sup> Ultimately, the School District moved for summary judgment, which the district court denied.<sup>14</sup> Distinguishing the case from *Montana v. United States*,<sup>15</sup> the district court held that jurisdiction properly resided in the Tribal Court.<sup>16</sup>

On appeal to the Eighth Circuit, the School District argued that the Tribal Court lacked jurisdiction over non-members because the Tribe had failed to demonstrate the applicability of either exception recognized in *Montana*.<sup>17</sup>

### III. ANALYSIS

#### A. Foundation of Tribal Subject Matter Jurisdiction: *Montana v. United States*

The general rule expressed in *Montana* is that a sovereign tribe lacks civil jurisdiction over the conduct of non-members on the reservation, unless their activities fall within one of two narrow exceptions.<sup>18</sup> The first exception exists where the tribe and the non-members have entered into a consensual relationship through commercial dealings, contracts, or other arrangements.<sup>19</sup> The second exception exists where the conduct of the non-members threatens or has direct effect on the political integrity, economic security, or welfare of the tribe.<sup>20</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Nevada v. Hicks*, 533 U.S. 353 (2001) (holding, tribal courts lack jurisdiction over § 1983 civil rights actions to regulate state officials acting within their official capacities within the reservation).

<sup>10</sup> *Belcourt Pub. Sch. Dist.*, 786 F.3d at 656.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 657; *see Belcourt Pub. Sch. Dist. v. Davis*, 997 F. Supp. 2d 1017, 1019 (D.N.D. 2014).

<sup>15</sup> *Montana v. United States*, 450 U.S. 544, 565 (1981).

<sup>16</sup> *Belcourt Pub. Sch. Dist.*, 786 F.3d at 657.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Montana*, 450 U.S. at 565-66

<sup>20</sup> *Id.*

*I. The First Montana Exception: Consensual Relationship with Tribe*

The School District argued that the agreements did not establish tribal jurisdiction under the first *Montana* exception because North Dakota law specifies that a school district cannot “authorize an agreement that enlarges or diminishes civil jurisdiction over matters that may be exercised by tribal governments.”<sup>21</sup> The court agreed, and determined that the School District did not, through its contract with the Tribe, represent its intention to deviate from this law.<sup>22</sup>

The Eighth Circuit further observed that even if the School District could agree to the expansion of tribal jurisdiction, the first *Montana* exception still would not apply.<sup>23</sup> The Tribe argued that a consensual relationship existed because the School District knowingly entered into a series of arrangements with the Tribe.<sup>24</sup> The United States Courts of Appeals for the Ninth and Tenth Circuits have held that contractual relationships between tribes and government entities do not constitute consensual relationships as required by the exception.<sup>25</sup>

The Eighth Circuit found *Red Mesa Unified School District v. Yellowtail* persuasive.<sup>26</sup> In *Red Mesa*, the United States District Court for the District of Arizona concluded that the Navajo Nation lacked jurisdiction over employment-related claims against the Red Mesa School District, which operated within the boundaries of the Navajo reservation.<sup>27</sup> The court held that the relationship between the Navajo Nation and school district was not consensual because the relationship stemmed from a state-mandated duty to educate children.<sup>28</sup> The court continued, stating that the first *Montana* exception fails because, despite the status of the Red Mesa School District as tribal lessees, the employment decisions at issue were made while the school district was operating within its governmental capacities, as mandated by the state constitution.<sup>29</sup>

The Eighth Circuit concluded that the School District and Tribe did not enter into a private consensual relationship.<sup>30</sup> The court determined that the Tribe and School District entered into an agreement because of a constitutionally-imposed mandate requiring all children within North Dakota to receive education.<sup>31</sup> The court, therefore, determined that the Tribe and School District did not enter into a consensual relationship as required for the first *Montana*

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<sup>21</sup> *Belcourt*, 786 F.3d at 658 (citing N.D. Cent. Code § 54-40.2-08 (1983)).

<sup>22</sup> *Id.*.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 659.

<sup>25</sup> *Id.* (citing *County of Lewis v. Allen*, 163 F.3d 509, 515 (9th Cir. 1998); *MacArthur v. San Juan County*, 497 F.3d 1057, 1074 (10th Cir. 2007)).

<sup>26</sup> *Id.* (citing *Red Mesa Unified Sch. Dist. v. Yellowhair*, No. CV-09-8071-PCT-PGR, 2010 WL 3855183 (D. Ariz. Sept. 28, 2010)).

<sup>27</sup> *Red Mesa*, 2010 WL 3855183 at \*5.

<sup>28</sup> *Id.* at \*3

<sup>29</sup> *Id.*

<sup>30</sup> *Belcourt Pub. Sch. Dist.*, 786 F.3d at 659.

<sup>31</sup> *Id.*

exception to apply.<sup>32</sup> The court did not rule out the possibility that such a relationship could arise; only that it was not the case in the agreement between the School District and the Tribe.<sup>33</sup>

## II. The Second Montana Exception: Conduct Threatening Welfare of Tribe

The second *Montana* exception allows for tribal jurisdiction over non-members if their conduct threatens the welfare of the tribe.<sup>34</sup> The Tribe argued that the conduct of the School District injures the Tribe's welfare.<sup>35</sup> The court noted that not every event that impacts the tribe's welfare, economy, or political integrity fulfills this exception.<sup>36</sup> The court reviewed the narrow scope of this exception, citing *Plains Commerce Bank v. Long Family Land and Cattle Co.*, which held the conduct of non-Indians must do more than merely injure the tribe.<sup>37</sup> Indeed, the conduct must "'imperil the subsistence' of the Tribe."<sup>38</sup> In addition, *Plains Commerce Bank* held that tribal jurisdiction should only be allowed when "'necessary to avert catastrophic consequences'" for the Tribe.<sup>39</sup>

The court found *Plains Commerce Bank* persuasive, and concluded that employment and excessive force claims did not threaten the welfare of the tribe, as required by the second *Montana* exception.<sup>40</sup> The court determined that the Tribe failed to prove that the conduct of the School District "imperil the subsistence" of the Tribe, or that the exercise of tribal jurisdiction was "necessary to avert catastrophic consequences."<sup>41</sup>

## IV. CONCLUSION

*Belcourt Public School District v. Davis* reaffirms the landmark cases concerning tribal civil jurisdiction in *Montana v. United States* and *Plains Commerce Bank v. Long Family Land and Cattle Co.* The court echoed the Ninth and Tenth Circuits, establishing that public school districts and tribes cannot enter into a consensual relationship as required by the *Montana* exception to establish tribal jurisdiction. This case shows that the first *Montana* exception is determinative on the court's interpretation of a private, consensual relationship between the public entity and the tribe. The court then simply applied the Supreme Court's previous decisions to negate the application of the second *Montana* exception. The court concluded that the Tribe failed to meet the burden

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 659 n. 4.

<sup>34</sup> *Montana*, 450 U.S. at 566.

<sup>35</sup> *Id.* at 660.

<sup>36</sup> *Id.* at 659-60.

<sup>37</sup> *Id.* at 660 (discussing *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316 (2008)).

<sup>38</sup> *Id.* (quoting *Plains Commerce Bank*, 554 U.S. at 341) (emphasis removed).

<sup>39</sup> *Id.* (quoting *Plains Commerce Bank*, 554 U.S. at 341) (emphasis removed).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 660-61.

of proof that either of the *Montana* exceptions applied to establish tribal jurisdiction over the School District.<sup>42</sup> Therefore, the district court's exercise of jurisdiction over the claims was proper.<sup>43</sup>

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<sup>42</sup> *Id.* at 661.

<sup>43</sup> *Id.* at 662.